

REDACTED - FOR PUBLIC INSPECTION



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August 15, 2019

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Received & Inspected

SEP -3 2019

FCC Mail Room

DOCKET FILE COPY ORIGINAL

Re: Request for Review by Telegration, Inc. of a Decision of The Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-A  
WC Docket No. 96-45  
WC Docket No. 06-122

Dear Secretary Dortch,

On behalf of Telegration, Inc. ("Telegration") please find attached a redacted, public version of Telegration's Request for Review of a Decision of The Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-A. The Request has been marked "**REDACTED - FOR PUBLIC INSPECTION.**"

Telegration is also submitting, under separate cover, a confidential version of this Request. The confidential version is marked, "**CONFIDENTIAL - NOT FOR PUBLIC INSPECTION.**"

An original and four (4) copies of this Request are enclosed. Enclosed is a duplicate copy of this letter. Please date-stamp the duplicate and return same in the enclosed stamped, self-addressed envelope.

Should you have any questions concerning this filing, please contact the undersigned.

Very truly yours,

CROCKER & CROCKER

Patrick D. Crocker

PDC/pas

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**Proceeding:** 96-45, 06-122  
**Confirmation #:** 2019081517215642  
**Submitted:** Aug 15, 2019 2:20:11 PM  
**Status:** RECEIVED  
**Name(s) of Filer(s)** Telegration, Inc.  
**Law Firm(s)** Crocker & Crocker  
**Attorney/Author Name(s)** Patrick D. Crocker  
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**Type of Filing** REQUEST  
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Before the Federal Communications Commission  
Washington, DC 20554

Received & Inspected

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In the matter of	)	<b>FCC Mail Room</b>
	)	
Request for Review	)	
by Telegration, Inc.	)	WC Docket No. 96-45
Of a Decision of the	)	
Universal Service Administrator and	)	WC Docket No. 06-122
Request for Waiver of	)	
Deadline for Filing Revisions	)	
To FCC Form 499-A	)	

**REQUEST FOR REVIEW BY TELEGRATION, INC. OF A DECISION OF  
THE UNIVERSAL SERVICE ADMINISTRATOR AND REQUEST FOR WAIVER  
OF DEADLINE FOR FILING REVISIONS TO FCC FORM 499-A**

Telegration, Inc. ("Telegration" or "Company") (Filer ID 825000), through counsel, files this Request pursuant to Sections 1.3 and 54.719 of the Federal Communications Commission ("FCC" or "Commission") Rules<sup>1</sup> to seek review of the decision to not allow Telegration to revise its 2006 FCC Form 499-A after the deadline passed to revise the form, to seek a waiver of the FCC requirement that downward revisions to FCC Form 499-A must be filed within one year of the filing date.<sup>2</sup> Telegration requests that the Commission reverse any fees, overages, interest, and penalties invoiced by USAC as a result of this occurrence.

Telegration attaches as **Exhibit A**, a copy of the original form that was filed with the Universal Service Administrative Company ("USAC"), as well as the revised form. Telegration respectfully requests that **Exhibit A** be accorded confidential treatment

<sup>1</sup> 47 C.F.R. §§ 1.3, 54.719.

<sup>2</sup> See *Federal-State Joint Board on Universal Serv.*, CC Docket Nos. 96-45, *et al.*, Order, 20 FCC Rcd. 1012, 1015 ¶ 7 (2004), Telecommunications Reporting Worksheet, FCC Form 499-A (2006).

pursuant to Section 0.459 of the Commission's rules, because it contains sensitive, non-public financial information for Telegration.<sup>3</sup>

Further, the Company requests that the FCC grant this request and direct USAC to accept its revised 2006 FCC Form 499-A, and to process it as if it was timely filed correctly, which would reverse any fees, penalties and interest which have been assessed to Telegration as a result of the filing of the incorrect 2006 FCC Form 499-A.

Telegration has been filing the FCC Form 499-A as required for fifteen years. Telegration made an inadvertent clerical error on its 2006 FCC Form 499-A adding a "zero" which greatly over-inflated the international revenues by nearly 1.5 million dollars resulting in over-inflated invoices from USAC based on the incorrect 2006 FCC Form 499-A

Telegration also attaches, as **Exhibit B**, the Declaration of Denis Raue, President of Telegration. (August 6, 2019).

#### **I. QUESTION PRESENTED FOR REVIEW AND RELIEF REQUESTED**

Telegration requests that the FCC apply relevant Commission precedent to allow Telegration to correct a ministerial error in its 499-A filing for 2006 that resulted in a significant increase in invoices for payment to the federal USF. Accordingly, Telegration seeks a waiver of the one-year downward revision deadline for Form 499-A, pursuant to Section 1.3 of the Commission's rules, in order that Telegration may resubmit its 499-A for 2006 with the corrected revenue amounts.<sup>4</sup>

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<sup>3</sup> 47 C.F.R. § 0.459.

<sup>4</sup> 5 Id. § 1.3.

## II. BACKGROUND

Telegration, Inc. was formed in the State of Delaware on March 28, 1990, and is based in Clawson, Michigan. The Company provides competitive interstate and intrastate long distance services in Michigan, Ohio, Illinois, Wisconsin, Florida and New York. The Company also provides international services, as well as toll-free services in addition to other non-telecommunications services to its customers. Telegration provides its services to approximately 940 customers. Telegration employs 26 people.

On or about March 16, 2006 Telegration submitted its 2006 FCC Form 499-A to USAC, including a typographical error which inadvertently added another "zero" to its international revenue, reporting Line 414.4(e) as [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] resulting in an overstatement of 2005 international revenues by nearly 1.5 million dollars.

Telegration became aware of the error when conducting an internal year-end audit when the Company received a "True-up 499A Tax adjustment billing statement" based upon the incorrectly filed on-line 499-A.

Telegration, subsequently submitted a revised 2006 FCC Form 499-A correcting the error, executed on April 12, 2007, to USAC. Copy included in **Exhibit A**. In correspondence dated August 1, 2007 USAC stated it was unable to accept the revision because it was not filed within one year of the original submission. A copy of the Revision Rejection is attached as **Exhibit C**. Telegration submitted an appeal letter dated September 4, 2007 to USAC. The appeal is referenced in an email to Mr. Raue from USAC dated October 17, 2007. A copy of the Telegration letter and USAC email is included in **Exhibit C**. USAC stated that they would defer to the FCC for a decision.

In correspondence dated November 7, 2007, Telegration provided a response to the Federal Communications Commission Enforcement Bureau providing explanation of this matter. Telegration believed that this response was an appeal to the FCC and that an appeal was pending. A copy of the response is attached as **Exhibit D**.

Telegration shows good cause for the Commission to waive the revision deadline. The FCC has granted similar waiver requests in substantially similar circumstances to those presented by Telegration. Granting Telegration's waiver request will be consistent with Commission precedent and the goals of the federal Universal Service Fund ("USF"). A waiver will alleviate any financial hardship imposed on Telegration because of its inadvertent error, while not affecting the funding of USF.

### **III. THE COMMISSION HAS BOTH THE AUTHORITY AND GOOD CAUSE TO GRANT TELEGRATION A WAIVER**

The Commission has the ability and the authority to administer and govern the USF under Section 254 of the Act.<sup>5</sup> The FCC's own rules specifically provide that the Commission will oversee USAC decisions: "[b]ecause USAC is administering the universal service support mechanisms for the Commission, subject to Commission rules and oversight."<sup>6</sup>

The U.S. Court of Appeals for the D.C. Circuit has held that "[f]or 'good cause,' the Commission may waive '[a]ny provision of the rules.'"<sup>7</sup> That court also has held that the

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<sup>5</sup> 47 U.S.C. § 254(a)(2) ("The Commission shall initiate a single proceeding to implement the recommendations from the Joint Board required by paragraph (1) ... Thereafter, the Commission shall complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year ....").

<sup>6</sup> *Changes to the Bd of Directors of the Nat'l Exch. Carrier Ass'n, amended on other grounds*, 15 FCC Rcd. 4840 (2000); Federal-State Joint Board on Univ. Service, Report and Order, 13 FCC Rcd 25058, 25095 ¶ 72 (1998).

<sup>7</sup> See *AT & T Corp. v. FCC*, 448 F.3d 426, 433 (D.C. Cir. 2006), citing, *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1165-66 (D.C. Cir. 1990) (affirming FCC waiver for Verizon and BellSouth to use their 1996 tariff filings to remedy the consequences of an erroneous order from the Common Carrier Bureau to remove

FCC may consider issues of hardship, equity, or more effective implementation of an overall policy on an individual basis.<sup>8</sup> In addition, the Commission itself has routinely held that it "generally finds good cause to grant a waiver of its rules where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question."<sup>9</sup> Requests for waiver will be granted where:

(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>10</sup>

The Commission has, on a number of occasions, reversed a decision by USAC and granted a waiver for filing deadlines in instances where there are ministerial errors similar to the circumstances presented by Telegration. Indeed, Telegration's circumstances are substantially similar to that of Ascent Media Group, Inc. ("Ascent"),<sup>11</sup> American Broadband & Telecommunications, ("American Broadband"),<sup>12</sup> Aventure

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certain retirement benefit costs from their Price Cap Index calculations, and allowing Verizon to treat those costs as "exogenous" and beyond Verizon's control); see also, 47 C.F.R. § 1.3, The Commission may waive a rule where the circumstances of the case render strict compliance to the rule is inconsistent with the public interest

<sup>8</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); see also *Federal-State Joint Board on Universal Serv. Contribution Methodology, Aventure Commc'ns Tech. LLC*, WC Docket No. 06-122, Order, DA 08-1514, 23 FCC Rcd. 10096, 10097 n. 10 (2008) ("Aventure Order").

<sup>9</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Sys.; E911 Phase II Compliance with Deadlines for Tier III Carriers*, CC Docket No. 94-102, Order, 20 FCC Rcd. 7709, 7714-15 (2005).

<sup>10</sup> 47 C.F.R. § 1.925(b)(3)(i), (ii).

<sup>11</sup> See *Universal Serv. Contribution Methodology, Petition for Reconsideration by Ascent Media Group, Inc.*, WC Docket No. 06-122, Order on Reconsideration, DA 13-966, 28 FCC Rcd. 6150, 6150 ¶1 (2013) ("Ascent Recon. Order").

<sup>12</sup> *Universal Serv. Contributions Methodology, Request for Review of a Decision of the Universal Serv. Admin. & Request for Waiver by American Broadband & Telecommunications*, WC Docket No. 06-122, Order, DA 13-1608, 28 FCC Rcd. ¶ 1 10358, I (2013) ("American Broadband Order").

Communications Technology LLC ("Aventure"), and Peak Communications, Inc. ("Peak"),<sup>13</sup> all of which whom granted a waiver of the deadline for filing revisions.

The Commission concluded in the *American Broadband Order* that

strict enforcement of the revision filing deadline and the resulting interest and penalties would disproportionately penalize American Broadband. Given the clerical nature and magnitude of the error, we find that good cause exists to waive the filing deadline... We direct USAC to accept the revised filing as if timely filed and to process it accordingly.<sup>14</sup>

Further, the FCC held on reconsideration in the *Ascent Media Order* that even with the annual true-up process, "strict enforcement of the filing deadline and the imposition of the associated interest and penalties in this case would disproportionately penalize Ascent Media."<sup>15</sup>

In the *Aventure Order*, the Bureau waived the 45-day deadline for revisions, and directed USAC to accept Aventure's corrected form outside of the 45-day revision period. Because of an inadvertent reporting error, which was made by virtue of a typographical error often called a "fat-finger", Aventure made an overpayment exceeding \$250,000.<sup>16</sup> Aventure's request for waiver was granted.<sup>17</sup>

Finally, in the *Peak Order*, the Commission found that a waiver of the deadline for revisions was warranted, because "Peak ... mistakenly reported on Line 120 of its Form 499-Q its total projected revenue, including non-assessable intrastate and non-

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<sup>13</sup> *Emergency Request for Review by Peak Commc 'ns, Inc. of a Decision of the Universal Serv. Adm'r & Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q*, 29 FCC Rcd. 9668 (2014) ("*Peak Order*").

<sup>14</sup> *American Broadband Order*, 28 FCC Rcd. at 10364 ¶ 15.

<sup>15</sup> *Ascent Media Order* at 6154-55 ¶ 11.

<sup>16</sup> *Aventure Order*, 23 FCC Rcd. at 10097 ¶ 5. As a separate matter, the Commission also allowed the revision of Aventure's 499-Q, because of the long period that would elapse between the 499-Q filing and the 499-A filing that would true-up the overpayments. Telegradation is requesting the approval of the Commission to amend its 499-A filing for 2006, and credit its overbilling to its account with USAC.

<sup>17</sup> *Aventure Order*, 23 FCC Rcd. at 1098-99 ¶ 7.



telecommunications revenue, instead of its projected end-user interstate and international telecommunications revenue."<sup>18</sup> This misstatement, which, as in the Aventure Order, was a "fat-finger" mistake, resulted in higher USAC assessments of Peak which were reversed by the Bureau by grant of a waiver.

The Commission has also allowed the late-filing of 499-As when "good cause" exists.<sup>19</sup> For example, the Commission found good cause to allow CTE Telecom, Inc. ("CTE") to file a late revision to a 499-A when CTE demonstrated that it had overpaid into the USF.<sup>20</sup> The FCC also has allowed companies to amend 499-A filings. Here, Telegration inadvertently added a "zero" to its Line 414(e) international revenue resulting in a significant over-inflation of international revenues by nearly 1.5 million dollars and greatly inflated billing by USAC based on this incorrect filing.

Good cause is apparent in Telegration's case here. The circumstances in Telegration's current situation are similar in that the errors made on the FCC Form 499-A were of a clerical nature, and not intentional or deliberate; and the magnitude of the fees assessed disproportionately penalize Telegration. Basic equitable standards require that Telegration realize those monies back in the form of credits on its USF invoices.

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<sup>18</sup> *Peak Order*, 29 FCC Rcd. at 9668 n. 6.

<sup>19</sup> See *Universal Serv. Contribution Methodology, Petition for Declaratory Ruling by the Rural Independent Competitive Alliance, Request for Review of a Decision of the Universal Serv. Admin. Co. by Blackfoot Communications, Inc.*, WC Docket No. 06-122, Report and Order, 28 FCC Rcd. 16037, 16043, 115 n. 49 (2013) (ordering USAC to accept amended 499-A filings from the Members of the Rural Independent Competitive Alliance (RICA) as a result of Declaratory Ruling that changed how fixed local service revenues are assessed.); *Universal Serv. Contribution Methodology, Petition for Declaratory Ruling by the Rural Independent Competitive Alliance Petition for Limited Waiver & Request for Review of Decision of the Universal Serv. Admin 'r by ComSouth Telenet*, 29 FCC Rcd. 9316, 93181 ¶ 3-5 (2014) (ordering USAC to accept amended 499-A filings of ComSouth Telenet).

<sup>20</sup> *Universal Serv. Contribution Methodology, Request for Review of a Decision of the Universal Serv. Admin 'r by CTE Telecom, LLC*, 27 FCC Rcd. 15242, 15246 ¶ 11 (2012) ("CTE Decision")

In addition, grant of this request is in the public interest. Telegration is a long-standing competitive long distance provider. Over the course of its operations, Telegration has never had a financial issue of this magnitude. Telegration is a small provider. Crediting of the overages, interest, penalties, or associated fees invoiced by USAC resulting from this clerical error is an equitable, fair, and appropriate response, and is Telegration's only remedy to rectify its losses.

#### **IV. THE UNIVERSAL SERVICE FUND WILL NOT BE ADVERSELY IMPACTED**

The waiver of the one-year revision deadline for the 2006 FCC Form 499-A for Telegration will not negatively impact the federal USF either fiscally or administratively to any significant extent. Granting the waiver in this case will not adversely impact the fund, while ensuring that the error in question here does not impose a grossly disproportional burden on Telegration.

#### **V. CONCLUSION**

Telegration will continue to pay USF contributions in full and timely file all forms as required. The relief requested herein is aligned and supported by Commission precedent, and its current situation is consistent with those circumstances. Accordingly, Telegration requests that the Commission apply the same reasoning as it did in the *Ascent Media Order*, *American Broadband Order*, *Aventure Order*, and the *Peak Order*, and grant the requested relief. The one-time, ministerial nature of Telegration's error and the magnitude of the financial harm to Telegration constitute good cause and are special circumstances that justify the requested relief.

For all these reasons, Telegration respectfully requests that the Commission:

1. Waive the one-year revision deadline and direct USAC to accept Telegration's amended 2006 FCC Form 499-A as if timely filed, and process accordingly;
2. Reverse any fees, interest, penalties,<sup>21</sup> which have accrued on the unpaid USAC invoices as a result of the incorrect 2006 FCC Form 499-A, as Telegration has paid the amounts that would have been due if the 2006 FCC Form 499-A was filed correctly.

Telgration will continue to pay correctly-calculated amounts as required. In addition, Telegration's requested relief is aligned with Commission precedent, and its current situation is consistent with those circumstances. Accordingly, Telegration requests that the Commission apply the same reasoning as it did in the Ascent Media Order, American Broadband Order, Aventure Order, and the Peak Order and grant the relief requested. The clerical nature and magnitude of the error and the undue financial harm that this clerical error caused the Company, constitutes good cause and special circumstances that justify the requested relief.

Dated: 8-15-19

Respectfully Submitted,

Telegration, Inc.

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<sup>21</sup> 47 C.F.R. Section 54.713 of the Commission's rules states that contributors must pay the amount billed by the due date provided in invoices in order to avoid the assessment of interest and penalties provided under the Debt Collection Improvement Act of 1996 ("DCIA"). Because Telegration paid the amounts it would be responsible to pay, if it's 2006 FCC Form 499-A was completed correctly. Telegration requests that any interest, fees and late penalties that would be assessed on the erroneously billed amounts not be applied.

**REDACTED - FOR PUBLIC INSPECTION**

**EXHIBIT A**

**TELEGRATION, INC.'s FCC FORM 499-s**

**2006 499-A      ACCEPTED FILING**

**2006 499-A      REJECTED FILING**

**CONFIDENTIAL  
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**EXHIBIT B**

**DECLARATION OF DENIS RAUE**

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NOT FOR PUBLIC INSPECTION  
FILED UNDER SEAL PURSUANT TO 47 C.F.R §0.459**

**REDACTED - FOR PUBLIC INSPECTION**

**EXHIBIT C**

**TELEGRATION, INC.**

**2006 FCC FORM 499-A – USAC REJECTION**

**APPEAL LETTER TO USAC**

**USAC EMAIL TO MR. RAUE**

**CONFIDENTIAL**

**NOT FOR PUBLIC INSPECTION**

**FILED UNDER SEAL PURSUANT TO 47 C.F.R § 0.459**

**REDACTED - FOR PUBLIC INSPECTION**

**EXHIBIT D**

**TELEGRATION, INC.**

**RESPONSE TO FCC ENFORCEMENT BUREAU**

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